

B. INVESTIGATION AND IMPEACHMENT

§ 5. Introduction and Referral of Charges

In the majority of cases, impeachment proceedings in the House have been initiated either by introducing resolutions of impeachment by placing them in the hopper, or by offering charges on the floor of the House under a question of constitutional privilege. Resolutions dropped in the hopper were used to initiate impeachment proceedings against Associate Justice William O. Douglas and President Richard M. Nixon. Where such resolutions have directly impeached federal civil officers, they have been referred by the Speaker to the Committee on the Judiciary, which has jurisdiction over federal judges and presidential succession; where they have called for an investigation into such charges by the Committee on the Judiciary or by a select committee they have been referred by the Speaker to the Committee on Rules, which has had jurisdiction over resolutions authorizing investigations by committees of the House.⁽¹⁾

1. See §§5.10, 5.11, *infra*. In the case of Justice Douglas, the Committee on the Judiciary authorized a special subcommittee to investigate the

Where a Member raises a question of constitutional privilege to present impeachment proceedings on the floor of the House, he must in the first instance offer a resolution, which resolution must directly call for impeachment, rather than call for an investigation.⁽²⁾

Impeachment proceedings in the House have been set in motion by memorial or petition,⁽³⁾ and on one occasion by message from the President.⁽⁴⁾ In the 93d Congress the Vice President sought to initiate an investigation by the House into charges pending

charges, without the adoption by the House of a resolution specifically authorizing an investigation (see §6.11, *infra*). In the case of President Nixon, the Committee on the Judiciary reported a resolution which was adopted by the House, specifically conferring on the committee the power to investigate the charges (see §6.2, *infra*).

2. See §5.4, *infra*. But see §18.2, *infra*, for one occasion where a Member gained the floor under a question of privilege and offered charges but not a resolution of impeachment.
3. 3 Hinds' Precedents §§2364, 2469 (memorial from state legislature initiating proceedings against Judge Charles Swaine, resulting in his impeachment), 2491, 2494, 2496; 6 Cannon's Precedents §552.
4. 3 Hinds' Precedents §2294 (Senator William Blount).

against him in the courts, but no action was taken on his request (by letter to the Speaker).⁽⁵⁾

Cross References

- Initiation of specific impeachment proceedings, see §§ 15–18, *infra*.
- Jurisdiction of House committees generally, see Ch. 17, *infra*.
- Privilege for consideration of amendments to articles of impeachment, see § 10, *infra*.
- Privilege of reports on impeachment, see § 8, *infra*.
- Questions of privilege of the House, raising and substance of, see Ch. 11, *supra*.
- Resolutions, petitions and memorials generally, see Ch. 24, *infra*.

Privilege of Impeachment Charges and Resolutions

§ 5.1 A proposition impeaching a federal civil officer is privileged when offered on the floor of the House.

On Jan. 6, 1932,⁽⁶⁾ Mr. Wright Patman, of Texas, rose to a question of constitutional privilege, impeached Secretary of the Treasury

Andrew W. Mellon, and offered a resolution authorizing an investigation:

IMPEACHMENT OF ANDREW W. MELLON, SECRETARY OF THE TREASURY

MR. PATMAN: Mr. Speaker, I rise to a question of constitutional privilege. On my own responsibility as a Member of this House, I impeach Andrew William Mellon, Secretary of the Treasury of the United States, for high crimes and misdemeanors, and offer the following resolution:

Whereas . . .

Resolved, That the Committee on the Judiciary is authorized and directed, as a whole or by subcommittee, to investigate the official conduct of Andrew W. Mellon, Secretary of the Treasury, to determine whether, in its opinion, he has been guilty of any high crime or misdemeanor which, in the contemplation of the Constitution, requires the interposition of the constitutional powers of the House. Such committee shall report its findings to the House, together with such resolution of impeachment or other recommendation as it deems proper.

Sec. 2. For the purposes of this resolution, the committee is authorized to sit and act during the present Congress at such times and places in the District of Columbia or elsewhere, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to employ such experts, and such clerical, stenographic, and other assistants, to require the attendance of such witnesses and the production of such books, papers, and documents, to take such testimony, to have such printing and binding done, and to make such expenditures not exceeding \$5,000, as it deems necessary.

5. See § 5.14, *infra*, for Vice President Spiro T. Agnew's request and for a discussion of other cases where federal civil officers have sought to initiate investigations into charges against them.
6. 75 CONG. REC. 1400, 72d Cong. 1st Sess.

§ 5.2 Although a resolution of impeachment is privileged, it may not be called up in the House while another Member has the floor and does not yield for that purpose, but it may be introduced for reference through the hopper at the Clerk's desk.

On Apr. 15, 1970, Mr. Louis C. Wyman, of New Hampshire, had the floor for a special-order speech and yielded to Mr. Andrew Jacobs, Jr., of Indiana:

MR. JACOBS: Mr. Speaker, will the gentleman yield for a three-sentence statement?

MR. WYMAN: I yield to the gentleman from Indiana.

MR. JACOBS: Mr. Speaker, the gentleman from Michigan has stated publicly that he favors impeachment of Justice Douglas.

He, therefore, has a duty to this House and this country to file a resolution of impeachment.

Since he refuses to do so and since he raises grave questions, the answers to which I do not know, but every American is entitled to know, I introduce at this time the resolution of impeachment in order that a proper and dignified inquiry into this matter might be held.

Mr. Jacobs then introduced his resolution (H. Res. 920) through the hopper and it was subsequently referred to the Committee on the Judiciary.⁽⁷⁾

7. 116 CONG. REC. 11942, 91st Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:⁽⁸⁾ The gentleman from New Hampshire has the floor.

MR. WYMAN: I did not yield for that purpose.

THE SPEAKER PRO TEMPORE: The gentleman from Indiana has introduced a resolution.⁽⁹⁾

§ 5.3 The Speaker ruled that whether or not a resolution of impeachment was privileged was a constitutional question for the House and not the Chair to decide, where the resolution included charges against former civil officers.

On May 23, 1933, Mr. Louis T. McFadden, of Pennsylvania, rose to a question of constitutional privilege and offered House Resolution 158, impeaching numerous members and former members of the Federal Reserve Board. During the reading of the resolution Mr. Carl E. Mapes, of Michigan, made a point of order against the resolution:

I wish to submit the question to the Speaker as to whether or not a person who is not now in office is subject to impeachment? This resolution of the gentleman from Pennsylvania refers to several people who are no longer holding any public office. They are not now at least civil officers. The Constitution

8. Charles M. Price (Ill.).

9. 116 CONG. REC. 11920, 91st Cong. 2d Sess.

provides that the “President, Vice President, and all civil officers shall be removed from office on impeachment”, and so forth. I have had no opportunity to examine the precedents since this matter came up, but it occurs to me that the resolution takes in too much territory to make it privileged.

Speaker Henry T. Rainey, of Illinois, ruled as follows:

That is a constitutional question which the Chair cannot pass upon, but should be passed upon by the House.

The resolution was referred on motion to the Committee on the Judiciary.⁽¹⁰⁾

Initiation of Impeachment Charges by Motion or Resolution

§ 5.4 In impeaching an officer of the United States as a matter of constitutional privilege, a Member must in the first instance present a motion or resolution.

On Jan. 18, 1933, Mr. Louis T. McFadden, of Pennsylvania, attempted to impeach President Herbert Hoover by presenting a question of constitutional privilege. Speaker John N. Garner, of Texas, ruled that a resolution or motion must first be presented:⁽¹¹⁾

10. 77 CONG. REC. 4055, 73d Cong. 1st Sess.

11. 76 CONG. REC. 2041, 2042, 72d Cong. 2d Sess.

QUESTION OF PRIVILEGE

MR. MCFADDEN: Mr. Speaker, I rise to a question of constitutional privilege.

THE SPEAKER: The gentleman will state it.

MR. MCFADDEN: Mr. Speaker, on December 13, 1932—

MR. [ROBERT] LUCE [of Massachusetts]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. LUCE: Mr. Speaker, the raising of a question of constitutional privilege must be preceded by a resolution or motion

THE SPEAKER: As the Chair understands it, the gentleman is stating his constitutional question. Has the gentleman a resolution?

MR. MCFADDEN: I am trying to communicate to the House what I propose to do here, Mr. Speaker.

MR. LUCE: I insist on the point of order, Mr. Speaker.

THE SPEAKER: The rules of the House provide that the gentleman must send a resolution to the Clerk's desk in raising a question of constitutional privilege.

MR. MCFADDEN: If the Speaker will permit, I am attempting to make a privileged statement to the House, and I believe I am within my rights in doing this.

THE SPEAKER: In order for the gentleman to have the right to make such a statement to the House, he must send a resolution to the Clerk's desk and have it read, on which the House may then act. The gentleman would then have one hour in which to address the House, if he presented a

question of constitutional privilege. That is the only way the gentleman can obtain the floor.

MR. MCFADDEN: Mr. Speaker, I believe under the rules I am entitled to make a statement.

THE SPEAKER: Not prior to the submission of a resolution.

MR. MCFADDEN: If the Speaker will pardon me, I have not offered a resolution. I rise to a question of constitutional privilege, and I believe I have the right to communicate to the House a constitutional privilege.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I make the point of order that if the integrity of the gentleman has been impugned in any way by anyone, this would give him a constitutional privilege, and he has the right to rise to that privilege and state it without offering a resolution.

THE SPEAKER: That is true of a question of personal privilege, but the gentleman rises to a question of constitutional privilege. This can only be done, as the Chair understands it, by the presentation of a resolution upon which the constitutional question is based. A mere statement by the gentleman does not comply with the rules of the House. If the gentleman has no resolution involving a constitutional question, the Chair thinks he is not entitled to recognition.

MR. MCFADDEN: May I point out, Mr. Speaker, that impeachment proceedings are brought by other ways than formal whereases. It has been done at times by a memorial. I insist, Mr. Speaker, I am within my rights in communicating my statement to the House of Representatives.

THE SPEAKER: The Chair wants to give the gentleman all the privileges

he is entitled to under the rules of the House, but at the same time it is the duty of the Chair to maintain the rules, and it is the impression of the Chair from observation during the last 20 years that whenever a Member states a question of constitutional privilege it must be done in the form of a resolution. If a Member raises a question of personal privilege, the Member may then state the question of personal privilege and is entitled to an hour. Questions of personal privilege are on a different footing from a constitutional question of privilege.

MR. MCFADDEN: Mr. Speaker, I am still of the opinion that I am within my constitutional rights and am entitled to communicate a statement to the House of Representatives.

THE SPEAKER: The Parliamentarian has just called the attention of the Chair to a decision by Speaker Longworth, of February 16, 1929 (70th Cong., 2d sess., Record, p. 3602), in which he says:

In presenting a question of the privilege of the House a Member, in the first instance, must present a motion or resolution. Of course, this rule does not apply to a Member rising to a question of personal privilege.

This is a decision of Speaker Longworth, rendered in 1929, which is on all fours with this situation. The gentleman is not presenting a question of personal privilege but a question of constitutional privilege, and, in the instance referred to, following a number of precedents, it was held that the Member must present a resolution in the first instance on which to base his statement to the House, and then would be entitled to one hour.

MR. MCFADDEN: Mr. Speaker, I again call attention to the fact that impeachments may be brought by memorials and by other methods than that which has been stated in the decision referred to.

THE SPEAKER: When such memorials and petitions are presented to the House they are referred to the committee having jurisdiction of the particular subject. If a Member of the House bases his question of privilege on a memorial or petition, the memorial or petition must first be reported by the Clerk, and then the House may take such action as it sees fit.

MR. MCFADDEN: May not a Member of the House, under the right given him by the Constitution, present a communication to the House of Representatives which might later result in an impeachment?

THE SPEAKER: If the gentleman has a communication of that character, let him send it to the Clerk's desk and the Clerk will report it. Then the House can take such action as it deems proper. The Chair wants to be perfectly frank, and if the gentleman from Pennsylvania is undertaking to address the House for one hour, the Chair has no objection to that; but the Chair must maintain the rules and precedents of the House as the Chair finds them, and the gentleman can not get the floor under the proposition he has presented at the present time unless he sends up a resolution or motion.

Offering Articles of Impeachment

§ 5.5 In presenting impeachment charges as privileged, a

Member need not offer articles of impeachment, which are prepared by the appropriate committee.

On May 7, 1935,⁽¹²⁾ Mr. Everett M. Dirksen, of Illinois, rose to a question of constitutional privilege and impeached Judge Samuel Alschuler; he offered House Resolution 214, authorizing an investigation by the Committee on the Judiciary. During his remarks, Speaker Joseph W. Byrns, of Tennessee, upheld the privileged nature of the charges:

MR. [DONALD C.] DOBBINS [of Illinois]: Mr. Speaker, a point of order. I have heard no articles of impeachment read. As I have listened to the matter presented by the gentleman from Illinois [Mr. Dirksen], it is nothing more nor less than a resolution asking for an inquiry, and not articles of impeachment. It seems to me that it is not a privileged matter, and the gentleman is not entitled to occupy the time of the House in this manner. The gentleman has not offered any articles of impeachment.

THE SPEAKER: The gentleman has offered no articles of impeachment. He is simply making charges.

MR. DOBBINS: I assumed he had finished. There have been no articles of impeachment presented.

THE SPEAKER: Charges of impeachment; not articles of impeachment.

MR. DOBBINS: I have heard no articles of impeachment read.

12. 79 CONG. REC. 7081-86, 74th Cong. 1st Sess.

MR. DIRKSEN: It seems to me this was in its entirety articles of impeachment.

MR. DOBBINS: It is nothing more than a resolution of inquiry.

MR. DIRKSEN: Perhaps the gentleman did not hear the first part of my remarks. I will read the first paragraph of this report:

Samuel Alschuler, justice of the Circuit Court of Appeals, Seventh Circuit, is impeached for high crimes and misdemeanors in said office upon the following specific charges.

MR. DOBBINS: As I understand articles of impeachment, Mr. Speaker, that does not amount to an impeachment at all.

THE SPEAKER: The gentleman does not prepare articles of impeachment. That is done by the committee.

MR. DOBBINS: It is simply a resolution of inquiry such as we have offered here every day, and is not a privileged matter.

THE SPEAKER: The Chair can only state what the gentleman said when he took the floor; that is, that he was preferring charges of impeachment against a certain United States circuit judge.

MR. DOBBINS: But there have been no such charges; simply a resolution of inquiry.

THE SPEAKER: The gentleman is making his charges now.

Debate on Question of Privilege to Present Impeachment Charges

§ 5.6 A Member recognized on a question of privilege to

present impeachment charges against an officer of the government is entitled to an hour for debate.

On Jan. 14, 1936, Mr. Robert A. Green, of Florida, rose to a question of constitutional privilege and presented charges of impeachment against Judge Halsted L. Ritter. During the course of his remarks, Speaker Joseph W. Byrns, of Tennessee, ruled as follows on recognition and time for debate:

THE SPEAKER: The Chair will state to the gentleman from Michigan [Mr. Carl E. Mapes] that the gentleman from Florida having raised a question of privilege and having made these charges is entitled to 1 hour on the charges. The gentleman has been recognized and may use all or any portion of the hour he sees fit.⁽¹³⁾

§ 5.7 In presenting impeachment charges as privileged, a Member is not necessarily confined to a bare statement of the facts but may supplement them with argumentative statements.

On May 7, 1935, Mr. Everett M. Dirksen, of Illinois, rose to a question of constitutional privilege and impeached Circuit Judge Samuel Alschuler. He was recognized for an hour and during his remarks Speaker Joseph W. Byrns, of Ten-

13. 80 CONG. REC. 404, 406, 74th Cong. 2d Sess.

nessee, overruled a point of order against the content of his remarks:⁽¹⁴⁾

MR. [HATTON W.] SUMNERS of Texas: I am not familiar with the precedents, but I have the impression that in preferring charges of impeachment, argumentative statements should be avoided as much as possible. If I am wrong in that statement with reference to what the precedents and custom have established, I of course withdraw the observation.

MR. DIRKSEN: Mr. Speaker, I have no desire to violate the precedents, and if I have done so it is only because I have not had an opportunity to examine them thoroughly, but if the objection is well taken, I should prefer not to present argumentative matters to the House.

MR. SUMNERS of Texas: I am sure the gentleman does not propose to violate the precedents, and unfortunately I do not know about the matter myself. I am not advised as to what the precedents establish, but without looking them up, merely from the standpoint of what would seem to be proper procedure, it occurs to me that all argumentative statements be omitted in preferring impeachment charges.

MR. DIRKSEN: Mr. Speaker, there are two more pages of explanatory matter which perhaps I should not present to the House at this time if the point is well taken. I would, however, like to put them into the Record as elaborating the statement of specific charges that have been made.

THE SPEAKER: The Chair thinks it is entirely up to the gentleman from Illi-

nois so far as the propriety of his statement is concerned.

MR. DIRKSEN: I do not want to violate any of the proprieties of the House, Mr. Speaker.

MR. SUMNERS of Texas: I do not know what they are myself.

THE SPEAKER: The gentleman from Illinois is making his statement on his own responsibility as a Member of the House.

On Jan. 14, 1936, Mr. Robert A. Green, of Florida, rose to a question of constitutional privilege and presented charges of impeachment against Judge Halsted L. Ritter. During the course of his remarks, Speaker Byrns overruled a point of order against the personal nature of Mr. Green's remarks:⁽¹⁵⁾

MR. [CARL E.] MAPES [of Michigan]: Mr. Speaker, as I understand, the gentleman has made his impeachment charges, and for the last 10 minutes has been proceeding almost entirely with an argument and a personal statement which I do not think are in order under the circumstances. I think I will make the point of order, Mr. Speaker.

THE SPEAKER: The Chair will state to the gentleman from Michigan that the gentleman from Florida having raised a question of privilege and having made these charges is entitled to 1 hour on the charges. The gentleman has been recognized and may use all or any portion of the hour he sees fit.

MR. MAPES: Is the gentleman entitled during that hour to engage in a general discussion of the charges?

14. 79 CONG. REC. 7081-86, 74th Cong. 1st Sess.

15. 80 CONG. REC. 404, 406, 74th Cong. 2d Sess.

THE SPEAKER: He is, under all the precedents with which the Chair is familiar.

Privilege of Questions Incidental to Impeachment

§ 5.8 Where privileged resolutions for the impeachment of a federal civil officer have been referred to a committee, that committee may report and call up as privileged resolutions incidental to consideration of the impeachment question, including those pertaining to subpena authority and funding of an investigation.

On Feb. 6, 1974, Peter W. Rodino, Jr., of New Jersey, Chairman of the Committee on the Judiciary, called up as privileged House Resolution 803, authorizing that committee to investigate the sufficiency of grounds for impeachment of President Richard Nixon. Various resolutions of impeachment of the President had previously been referred to the committee.⁽¹⁶⁾

Parliamentarian's Note: Resolutions authorizing a committee to conduct investigations with sub-

16. 120 CONG. REC. 2349, 2350, 93d Cong. 2d Sess. For the events leading up to the presentation and adoption of H. Res. 803, and the reasons for its presentation, see § 15, *infra*.

pena power and resolutions funding such investigations from the contingent fund of the House are normally only privileged when respectively reported and called up by the Committee on Rules or the Committee on House Administration.⁽¹⁷⁾ But a committee to which resolutions of impeachment have been referred may report and call up as privileged resolutions incidental to the consideration of the impeachment question. For example, charges of impeachable offenses were referred to the Committee on the Judiciary in 1927, in relation to the conduct of District Judge Frank Cooper. The Committee on the Judiciary subsequently called up as privileged a resolution authorizing an investigation by the committee and funding such investigation from the contingent fund of the House. In response to a parliamentary inquiry, Speaker Nicholas Longworth, of Ohio, ruled that the resolution was privileged "because it relates to impeachment proceedings."⁽¹⁸⁾ If, however, such a

17. See Rule XI clause 22, *House Rules and Manual* §726 (1973), giving privileged status to reports of the Committee on House Administration on matters of expenditure of the contingent fund.

18. 6 Cannon's Precedents §549. For other occasions where the Committee on the Judiciary has reported and

resolution is offered on the floor by a Member on his own initiative and not reported from the committee to which the impeachment has been referred, it is not privileged for immediate consideration, since not directly calling for impeachment.⁽¹⁹⁾

§ 5.9 Resolutions proposing the discontinuation of impeachment proceedings are privileged for immediate consideration when reported from the committee charged with the investigation.

On Feb. 13, 1932, Mr. Hatton W. Sumners, of Texas, offered House Report No. 444 and House Resolution 143, discontinuing impeachment proceedings against Secretary of the Treasury Andrew W. Mellon. He offered the report as privileged and it was immediately considered and adopted by the House.⁽²⁰⁾

On Feb. 24, 1933, Speaker John N. Garner, of Texas, held that a resolution reported from the Committee on the Judiciary, proposing the discontinuance of an impeach-

ment proceeding, was privileged for immediate consideration:⁽¹⁾

THE SPEAKER: The Clerk will report the resolution.

The Clerk read the resolution, as follows:

HOUSE RESOLUTION 387

Resolved, That the evidence submitted on the charges against Hon. Harold Louderback, district judge for the northern district of California, does not warrant the interposition of the constitutional powers of impeachment of the House.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, when they report back a resolution of that kind, is it a privileged matter?

THE SPEAKER: It is not only a privileged matter but a highly privileged matter.

MR. [LEONIDAS C.] DYER [of Missouri]: Mr. Speaker, this is the first instance to my knowledge, in my service here, where the committee has reported adversely on an impeachment charge.

THE SPEAKER: The gentleman's memory should be refreshed. The Mellon case was reported back from the committee, recommending that impeachment proceedings be discontinued.

MR. SNELL: Was that taken up on the floor as a privileged matter?

THE SPEAKER: It was.

On Mar. 24, 1939, Mr. Sam Hobbs, of Alabama, called up a re-

called up as privileged resolutions authorizing the committee to conduct impeachment investigations, see 3 Hinds' Precedents §2029 and 6 Cannon's Precedents §§498, 528.

19. 6 Cannon's Precedents §468.

20. 75 CONG. REC. 3850, 72d Cong. 1st Sess.

1. 76 CONG. REC. 4913, 72d Cong. 2d Sess. (also cited at 6 Cannon's Precedents §514).

port of the Committee on the Judiciary on House Resolution 67, which report recommended against the impeachment of Secretary of Labor Frances Perkins. The report was called up as privileged and the House immediately agreed to Mr. Hobbs' motion to lay the report on the table.⁽²⁾

Referral of Resolutions Introduced Through Hopper

§ 5.10 Resolutions introduced through the hopper under Rule XXII which directly called for the impeachment or censure of President Richard Nixon in the 93d Congress were referred by the Speaker to the Committee on the Judiciary, while resolutions calling for an investigation by that committee or by a select committee with a view toward impeachment were referred to the Committee on Rules.

On Oct. 23, 1973, resolutions relating to the impeachment of President Nixon were introduced (placed in the hopper pursuant to Rule XXII clause 4) and severally referred as follows:⁽³⁾

2. 84 CONG. REC. 3273, 76th Cong. 1st Sess.
3. 119 CONG. REC. 34873, 93d Cong. 1st Sess. See also 116 CONG. REC.

By Mr. Long of Maryland:

H. Con. Res. 365. Concurrent resolution of censureship without prejudice to impeachment; to the Committee on the Judiciary.

By Ms. Abzug:

H. Res. 625. Resolution impeaching Richard M. Nixon, President of the United States, for high crimes and misdemeanors; to the Committee on the Judiciary.

By Mr. Ashley:

H. Res. 626. Resolution directing the Committee on the Judiciary to investigate whether there are grounds for the impeachment of Richard M. Nixon; to the Committee on Rules.

By Mr. Bingham:

H. Res. 627. Resolution directing the Committee on the Judiciary to inquire into and investigate whether grounds exist for the impeachment of Richard M. Nixon; to the Committee on Rules.

By Mr. Burton (for himself, Ms. Abzug, Mr. Anderson of California, Mr. Aspin, Mr. Bergland, Mr. Bingham, Mr. Brasco, Mr. Brown of California, Mr. Boland, Mr. Brademas, Mrs. Chisholm, Mr. Culver, Mr. Conyers, Mr. Dellums, Mr. Drinan, Mr. Eckhardt, Mr. Edwards of California, Mr. Evans of Colorado, Mr. Fascell, Mr. Fauntroy, Mr. Foley, Mr. William D. Ford, Mr. Fraser, Mr. Giaimo, and Ms. Grasso):

11941, 11942, 91st Cong. 2d Sess., Apr. 15, 1970 (resolution impeaching Associate Justice William O. Douglas of the Supreme Court, referred to the Committee on the Judiciary). See also *House Rules and Manual* §854 (1973) .

H. Res. 628. Resolution directing the Committee on the Judiciary to inquire into and investigate whether grounds exist for the impeachment of Richard M. Nixon; to the Committee on Rules.

. . .

By Mr. Hechler of West Virginia:

H. Res. 631. Resolution that Richard M. Nixon, President of the United States, is impeached of high crimes and misdemeanors; to the Committee on the Judiciary.

By Mrs. Heckler of Massachusetts:

H. Res. 632. Resolution to appoint a Special Prosecutor; to the Committee on the Judiciary. . . .

By Mr. McCloskey:

H. Res. 634. Resolution of inquiry; to the Committee on the Judiciary.

H. Res. 635. Resolution for the impeachment of Richard M. Nixon; to the Committee on the Judiciary.

By Mr. Mazzoli:

H. Res. 636. Resolution: an inquiry into the existence of grounds for the impeachment of Richard M. Nixon, President of the United States; to the Committee on Rules.

By Mr. Milford:

H. Res. 637. Resolution providing for the establishment of an Investigative Committee to investigate alleged Presidential misconduct; to the Committee on Rules.

By Mr. Mitchell of Maryland (for himself, Mr. Burton, and Mr. Fauntroy):

H. Res. 638. Resolution impeaching Richard M. Nixon, President of the United States, of high crimes and misdemeanors; to the Committee on the Judiciary.

§ 5.11 The Committee on Rules has jurisdiction of resolu-

tions authorizing the Committee on the Judiciary to investigate the conduct of federal officials and directing said committee to report its findings to the House “together with such resolutions of impeachment as it deems proper.”

On Feb. 22, 1966,⁽⁴⁾ a resolution (H. Res. 739) “authorizing the Committee on the Judiciary to conduct certain investigations” was referred to the Committee on Rules. The resolution called for an investigation into the official conduct of Federal District Court Judges Alfred P. Murrah, Stephen S. Chandler, and Luther Bohannon, in Oklahoma, and directed the Committee on the Judiciary to report its findings to the House “together with such resolutions of impeachment as it deems proper.”

Motions to Lay on the Table or to Refer

§ 5.12 The motion to lay on the table applies to resolutions proposing impeachment and may deprive a Member who has offered such a resolution of recognition for debate thereon.

4. 112 CONG. REC. 3665, 89th Cong. 2d Sess.

On Jan. 17, 1933,⁽⁵⁾ Speaker John N. Garner, of Texas, held that the motion to table applied to resolutions of impeachment and could deprive the proponent of debate on such a resolution:

MR. [LOUIS T.] MCFADDEN [of Pennsylvania]: On my own responsibility, as a Member of the House of Representatives, I impeach Herbert Hoover, President of the United States, for high crimes and misdemeanors.

THE SPEAKER: The Clerk will report the resolutions.

MR. MCFADDEN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MCFADDEN: Am I not entitled to an hour to discuss the resolution?

THE SPEAKER: The gentleman is entitled to an hour, but first the Clerk must report the resolution of impeachment.

MR. MCFADDEN: I offer the following resolution.

THE SPEAKER: The Clerk will report the resolution.

The Clerk read as follows: . . .

MR. [ROBERT] LUCE [of Massachusetts] (interrupting the reading of the resolution): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. LUCE: On a previous occasion charges apparently of the same purport were laid on the table by the House. Is it within the province of any Member to evade the rules and to take

a matter from the table by proceeding with a second movement of the same sort?

THE SPEAKER: The Chair, of course, has not heard the resolution read. Probably if it was identical with the resolution submitted some time ago and laid on the table there would be some question whether or not a second impeachment could be had. But the President can be impeached, or any person provided for by the Constitution, a second time, and the Chair thinks the better policy would be to have the resolution read and determine whether or not it is the same.

MR. [FRED A.] BRITTEN [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BRITTEN: Would a motion be in order at this time?

THE SPEAKER: No. The Chair would not recognize any Member to make a motion until the resolution is read.

MR. BRITTEN: Mr. Speaker, I ask unanimous consent that the resolution be considered as having been read.

THE SPEAKER: The Chair thinks the resolution should be read.

MR. MCFADDEN (again interrupting the reading of the resolution): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MCFADDEN: I understand that at the completion of the reading of this resolution it is planned—

THE SPEAKER: That is not a parliamentary inquiry. That is a statement.

MR. MCFADDEN: I am attempting to state a parliamentary inquiry, Mr. Speaker.

5. 76 CONG. REC. 1965-68, 72d Cong. 2d Sess.

THE SPEAKER: The gentleman will state it. The Chair will hear the gentleman.

MR. MCFADDEN: During the opening I addressed the Speaker to ascertain whether or not I would be protected in one hour time for debate. I am prepared to debate. I understand a certain motion will be made which will deprive me of that right.

THE SPEAKER: The Chair can not control 434 Members of the House in the motions they will make. The Chair must recognize them and interpret the rules as they are written. That is what the Chair intends to do. The gentleman from Pennsylvania would have an opportunity to discuss this matter for an hour under the rules of the House, if some gentleman did not take him off his feet by a proper motion. [Applause.]

MR. MCFADDEN: That is what I was attempting to ascertain.

The Clerk concluded the reading of the resolution.

MR. [HENRY T.] RAINEY [of Illinois]: Mr. Speaker, I move to lay the resolution of impeachment on the table.

THE SPEAKER: The gentleman from Illinois moves to lay the resolution of impeachment on the table.

May the Chair be permitted to make a statement with reference to the rule applying to that motion? The Parliamentarian has examined the precedents with reference to the motion. Speaker Clark and Speaker Gillette, under identical conditions, held that a motion to lay on the table took a Member off the floor of the House, although the general rules granted him one hour in which to discuss the resolution of impeachment or privileges of the

House. Therefore the motion is in order.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, I demand the yeas and nays.

Parliamentarian's Note: Under Rule XVI clause 4, the motion to lay on the table may be offered while a question is under debate, including a question of privilege, and is not debatable. The motion to refer is also in order under the rule and is debatable within narrow limits. The question of consideration may also be raised under Rule XVI clause 3; it is not debatable, but may be demanded before debate on the pending question, and may be raised against a question of the highest privilege.⁽⁶⁾

§ 5.13 Resolutions authorizing investigations into charges of impeachment have been referred, on motion, to the Committee on the Judiciary.

On Jan. 24, 1939,⁽⁷⁾ a Member declared his impeachment of certain officials of the executive branch, including Secretary of Labor Frances Perkins:

MR. [J. PARNELL] THOMAS of New Jersey: Mr. Speaker, on my own responsibility as a Member of the House

6. See Rule XVI clauses 3, 4 and notes thereto, *House Rules and Manual* §§ 778–787 (1973).

7. 84 CONG. REC. 702–11, 76th Cong. 1st Sess.

of Representatives, I impeach Frances Perkins, Secretary of Labor of the United States; James L. Houghteling, Commissioner of the Immigration and Naturalization Service of the Department of Labor; and Gerard D. Reilly, Solicitor of the Department of Labor, as civil officers of the United States, for high crimes and misdemeanors in violation of the Constitution and laws of the United States, and I charge that the aforesaid Frances Perkins, James L. Houghteling, and Gerard D. Reilly, as civil officers of the United States, were and are guilty of high crimes and misdemeanors in office in manner and form as follows, to wit: . . .

Mr. Thomas offered a resolution authorizing an investigation of charges, which resolution was referred, on motion, to the Committee on the Judiciary:

Resolved, That the Committee on the Judiciary be and is hereby authorized and directed, as a whole or by subcommittee, to investigate the official conduct of Frances Perkins, Secretary of Labor; James L. Houghteling, Commissioner of Immigration and Naturalization Service, Department of Labor; and Gerard D. Reilly, Solicitor, Department of Labor, to determine whether, in its opinion, they have been guilty of any high crimes or misdemeanors which, in the contemplation of the Constitution, requires the interposition of the constitutional powers of the House. Such committee shall report its findings to the House together with such articles of impeachment as the facts may warrant.

For the purposes of this resolution the committee is authorized and di-

rected to sit and act, during the present session of Congress, at such times and places in the District of Columbia, or elsewhere, whether or not the House is sitting, has recessed, or has adjourned; to hold hearings; to employ such experts and such clerical, stenographic and other assistance; and to require the attendance of such witnesses and the production of such books, papers, and documents; and to take such testimony and to have such printing and binding done; and to make such expenditures not exceeding \$10,000, as it deems necessary. . . .

MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, I move that the resolution be referred to the Committee on the Judiciary of the House and upon that I desire to say just a word. A great many suggestions have been made as to what should be done with this resolution, but I think this would be the orderly procedure so that the facts may be developed. The resolution will come out of that committee or remain in it according to the testimony adduced.

I therefore move the previous question on my motion to refer, Mr. Speaker.

The previous question was ordered.

The motion was agreed to.

On Jan. 6, 1932,⁽⁸⁾ a privileged resolution proposing an investigation directed towards impeachment, offered as privileged on the floor, was on motion referred to the Committee on the Judiciary:

IMPEACHMENT OF ANDREW W. MELLON,
SECRETARY OF THE TREASURY

MR. [WRIGHT] PATMAN [of Texas]: Mr. Speaker, I rise to a question of

8. 75 CONG. REC. 1400, 72d Cong. 1st Sess.

constitutional privilege. On my own responsibility as a Member of this House, I impeach Andrew William Mellon, Secretary of the Treasury of the United States for high crimes and misdemeanors, and offer the following resolution: . . .

Resolved, That the Committee on the Judiciary is authorized and directed, as a whole or by subcommittee, to investigate the official conduct of Andrew W. Mellon, Secretary of the Treasury, to determine whether, in its opinion, he has been guilty of any high crime or misdemeanor which, in the contemplation of the Constitution, requires the interposition of the constitutional powers of the House. Such committee shall report its findings to the House together with such resolution of impeachment or other recommendation as it deems proper.

Sec. 2. For the purposes of this resolution, the committee is authorized to sit and act during the present Congress at such times and places in the District of Columbia or elsewhere, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to employ such experts and such clerical, stenographic, and other assistants, to require the attendance of such witnesses and the production of such books, papers, and documents, to take such testimony, to have such printing and binding done, and to make such expenditures not exceeding \$5,000, as it deems necessary.

MR. [JOSEPH W.] BYRNS [of Tennessee]: Mr. Speaker, I move that the articles just read be referred to the Committee on the Judiciary, and upon that motion I demand the previous question.

The previous question was ordered.

THE SPEAKER:⁽⁹⁾ The question is on the motion of the gentleman from Ten-

nessee, that the articles be referred to the Committee on the Judiciary. The motion was agreed to.

Initiation of Investigation by Accused

§ 5.14 The Vice President sought to initiate an investigation by the House of certain charges brought against him, but the House took no action on the request.

On Sept. 25, 1973,⁽¹⁰⁾ Speaker Carl Albert, of Oklahoma, laid before the House a communication from Vice President Spiro T. Agnew requesting that the House investigate charges which might "assume the character of impeachable offenses" made against him by a U.S. Attorney in the course of a criminal investigation. The House took no action on the request by motion or otherwise.

Parliamentarian's Note: Several resolutions were introduced on Sept. 26, 1973, to authorize investigations into the charges referred to, both by the Committee on the Judiciary and by a select committee. The resolutions were referred to the Committee on Rules.⁽¹¹⁾

The Vice President cited in his letter a request made by Vice

10. 119 CONG. REC. 31368, 93d Cong. 1st Sess.

11. See H. Res. 566 and H. Res. 567, 93d Cong. 1st Sess.

9. John N. Garner (Tex.).

President John C. Calhoun in 1826 and discussed at 3 Hinds' Precedents §1736. On that occasion, the alleged charges related to the Vice President's former tenure as Secretary of War. The communication was referred on motion to a select committee which investigated the charges and subsequently reported to the House that no impropriety had been found in the Vice President's former conduct as a civil officer under the United States. The report of the select committee was ordered to lie on the table and the House took no further action thereon.

Vice President Agnew did not cite a precedent occurring in 1873, however, where the Committee on the Judiciary reported that a civil officer—Vice President Schuyler Colfax—could not be impeached for offenses allegedly committed prior to his term of office as a civil officer under the United States. The committee had investigated at his request whether Vice President Colfax had, during his prior term as Speaker of the House, been involved in bribes of Members. As reported in 3 Hinds' Precedents §2510, the committee concluded as follows in its report to the House:

But we are to consider, taking the harshest construction of the evidence,

whether the receipt of a bribe by a person who afterwards becomes a civil officer of the United States, even while holding another official position, is an act upon which an impeachment can be grounded to subject him to removal from an office which he afterwards holds. To elucidate this we first turn to the precedents.

Your committee find that in all cases of impeachment or attempted impeachment under our Constitution there is no instance where the accusation was not in regard to an act done or omitted to be done while the officer was in office. In every case it has been heretofore considered material that the articles of impeachment should allege in substance that, being such officer, and while in the exercise of the duties of his office, the accused committed the acts of alleged inculcation.

The report was never finally acted upon by the House.

§ 6. Committee Investigations

The conduct of impeachment investigations is governed by those portions of Rule XI relating to committee investigatory and hearing procedure, and by any rules and special procedures adopted by the committee for the inquiry.⁽¹²⁾ An investigatory subcommittee charged with an impeachment inquiry is limited to the powers expressly authorized by the committee.⁽¹³⁾

12. See §§6.3 et seq.

13. See §6.11, *infra*, for the creation of a subcommittee to investigate and to